

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION – FLINT

In re:

JEFFREY S. BRAYAN

Debtor.

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COLLENE CORCORAN, CHAPTER 7 TRUSTEE

Plaintiff,

v.

JEFFREY S. BRAYAN

Defendant.

_____ /

Case No. 02-34421
Chapter 7
Hon. Walter Shapero

Adv. No. 03-3179
Hon. Walter Shapero

Opinion Denying Discharge Pursuant to 11 U.S.C. § 727

This matter came before the Court on Trustee’s “Third Amended Complaint to Deny the Debtor a Discharge Pursuant to 11 U.S.C. § 727(a).” For the reasons stated in this opinion, the Court grants the Trustee’s motion.

I. Facts

The Debtor, Jeffrey Brayan, was the founder and sole shareholder of J.S. Brayan, Inc., which dissolved after several law suits were brought against it. After this dissolution, the Debtor incorporated J.S. Brayan Industries, Inc. in September, 2002. The Debtor was the sole shareholder of both of these entities.

The Debtor filed a voluntary Chapter 7 case on December 23, 2002, and claimed exemptions of a 2002 Showhauler motor home, financial accounts with Republic Bank, a 2001 Harley Davidson Buell motorcycle, and a 1997 pontoon boat. These exemptions were denied by order of this Court on May 27, 2003.

Trustee, through her own investigation, discovered numerous assets that Debtor failed to disclose, including bank accounts at Republic Bank and Tri-Point Credit Union, a 2002 Karavan trailer, a 1995 Duck boat, a 1997 Honda dirt bike, a 2001 KTM dirt bike, a 2002 Rev Ski Doo, a 2003 MX2 x440 Ski Doo, a 2002 Mercury 60 horsepower Big Foot motor, a 2001 Seadoo XP Waverunner, and a boat lift and docking.

Additionally, the Trustee uncovered numerous undisclosed pre-petition transfers of interests to Debtor's wife, *i.e.*, within a few months prior to filing, Debtor added his wife to the titles to many of his assets, including the 1997 pontoon boat, the 2003 Buell motorcycle,¹ the 2002 Showhauler motor home,² the 2001 Seadoo XP Waverunner, the 1997 Honda dirt bike, and the 2001 KTM dirt bike.

During the course of the bankruptcy case, the Trustee filed a motion to compel Debtor to produce certain documents, which had been requested but not received, including credit card statements, check registers, cancelled checks and real estate closing documents. This motion was granted by the Court by an order dated September 3, 2003, which gave the Debtor 10 days to

¹This asset was subsequently traded-in on another motorcycle, post-petition, without the authority to do so or disclosure to the Trustee. The new motorcycle was put solely in the Debtor's wife's name.

²Debtor transferred another portion of his interest in the motor home, post-petition, to his father-in-law. This transfer was made without authority to do so, and was not disclosed to the Trustee.

comply. The Debtor failed to produce the documents. On September 25, 2003, the Trustee filed a motion to show cause why the Debtor should not be held in contempt for willful violation of the Court's September 3, 2003 order as well as for failure to turn over non-exempt assets to the Trustee. A Court order dated November 26, 2003 found Debtor in contempt and stated the Court would have Debtor arrested and brought before the Court if the requested documents were not produced by December 4, 2003. An additional Court order was entered on December 18, 2003, ordering Debtor to turn over property of the estate to the Trustee, including the 2002 Showhauler motor home, the 2001 Harley Davidson Buell motorcycle, and the 1997 pontoon boat; and ordering the Debtor to make available for inspection the household goods and furnishings located at 2461 Baldwin Road, Grand Blanc, Michigan.

On January 30, 2004, the Court once again ordered the Debtor to comply with discovery requests, and stated that it would be preparing an arrest warrant for Debtor if Debtor was not in compliance with the Court's orders by February 18, 2004.³ Debtor again failed to comply.

On July 8, 2004, the Court entered another order granting Trustee's motion for sanctions, which disallowed Debtor "from introducing any evidence which would support his assertion that he purchased assets on behalf of this son, Travis Brayan, during the years of 2001, 2002 and 2003." This order also sanctioned the Debtor \$600 – the amount of the Trustee's costs and fees relating to the motion – for his failure to respond to the discovery requests. On July 27, 2004, the Court, also sanctioned the Debtor \$5,592.50 for the costs the Trustee incurred in bringing the motions to compel against the Debtor. At the time of trial, both sanction amounts remained unpaid.

³The warrant was issued, but never executed.

Additionally, the Trustee made several demands of the Debtor to turn over the assets that he did not disclose, specifically, the 2002 Karavan trailer, the 1995 Duck boat, the 1997 Honda dirt bike, the 2001 KTM dirt bike, the 2002 Rev Ski Doo, the 2003 MX2 x440 Ski Doo, the 2002 Mercury 60 horsepower Big Foot motor, the 2001 Seadoo XP and the boat lift and docking. These demands were not complied with, so the Trustee was again forced to file a motion to compel the Debtor to turn over property. The motion was granted by Court order dated September 17, 2004. The Trustee further attempted to have assets seized on several occasions, but was unable to obtain possession of them due to the Debtor's unwillingness to cooperate.⁴ The Debtor did not amend his schedules or statement of financial affairs to include any of the assets or transfers of interest discovered by the Trustee.

The Trustee filed a complaint seeking to deny the Debtor a discharge pursuant to 11 U.S.C. § 727(a)(2)-(6). The original complaint was filed on September 25, 2003, then amended on October 15, 2003, January 9, 2004, and May 19, 2004. The third amended complaint is what is before the Court for decision.

II. Analysis

The clearest basis for denial of discharge in this case is 11 U.S.C. § 727(a)(6)(A), which provides: "The court shall grant the debtor a discharge, unless the debtor has refused, in the case to obey any lawful order of the court" A court has the authority to deny discharge if even a single one of its orders is not obeyed. In this case, no less than seven of the Court's orders have

⁴In fact, the Trustee testified that, during the last attempt to seize the motor home, the police had to be called. She also testified that she had ceased further attempts to physically obtain assets of the estate for fear of altercation and additional cost to the estate.

not been obeyed; and some are repetitive and many, if not all, of these had still not been obeyed as of the date of trial. If the recited and extensive disobedience and failure to comply with this Court's orders does not warrant denial of Debtor's discharge on these grounds, it is difficult to fathom what set of circumstances would. If anything, the Trustee and the Court have been excessively patient and lenient in countenancing Debtor's behavior. With this extensive disobedience, the Debtor has guaranteed himself a denial of discharge by this Court.

A denial of discharge under other provisions of the Bankruptcy Code is also warranted. One of these, 11 U.S.C. § 727(a)(4)(D), provides: "The court shall grant the debtor a discharge, unless the debtor knowingly and fraudulently, in or in connection with the case withheld from an officer of the estate entitled to possession under this title, any recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs."

As noted, and to recapitulate, the Trustee requested certain documents from the Debtor that related to his financial affairs. The Debtor did not respond to these requests, so the Trustee filed a motion to compel the Debtor to comply. The Debtor was ordered to comply with the Trustee's requests for documents on September 3, 2003, November 26, 2003, and January 30, 2004, as well as being found in contempt for failure to comply with these requests. The Debtor testified that he was aware of the Court's orders against him, yet he never provided these documents. The Debtor has given the Court no grounds to find other than that his withholding of the documents from the Trustee was knowing and fraudulent.

While the denial of discharge under the facts of this case might well be based on other provisions of § 727, a denial under § 727(a)(6)(A) is so clear as to dispense with the need to address other provisions.

III. Conclusion

For the reasons stated above, the Court denies Debtor's bankruptcy discharge. An order to that effect is being contemporaneously entered.

/s/ Walter Shapero
Honorable Walter Shapero
U.S. Bankruptcy Judge

Entered: October 14, 2005

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